

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated June 3, 2005. After entry of this amendment claims 1-13, and 21 will remain pending in the application. Reconsideration and allowance is respectfully requested in view of the amendments made and the remarks made below.

1. The Rejections under 35 U.S.C. §102(b)

Claims 1, 3-8, 10-13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,799,840 to Mogard (hereinafter "Mogard"). The Applicant respectfully submits that Mogard does not disclose each and every limitation of claims 1, 3-8, 10-13, and 21.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Office Action states that Mogard anticipates claims 1, 3-8, 10-13, and 21, by stating that "The abstract discloses the tamper evident band 280 is ultrasonically sealed to the container. The gripping projection is represented by reference character 300."

Mogard discloses a tamper evidence structure 275, shown in Figures 6-9. The tamper evidence structure 275 includes an L-shaped portion 280 having first and second arms. In order to open closure 10, a user grasps the gripping arm 300 and tears the first arm 285 from the cap 35 in the region of the tear joint 295. As can be seen in Figure 6, when the gripping arm is grabbed and torn, there is nothing left of the tamper evidence structure 275 attached to the lid. Second arm 290 is bonded to either flange 25, or the container and therefore is not integral with the body portion and is instead unitary. First arm 285 is removed from the lid portion altogether. There is no part of the tamper evidence structure 275 that remains integral with cap 35. Once first arm 285 is removed, cap 35 opens like a standard cap.

Therefore, the tamper evidence structure taught by Mogard does not meet the limitation of claim 1, requiring a "tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident

band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.” Mogard does not disclose having a tamper evident band unitary with the body portion. Additionally, Mogard does not have a tamper evident band that mechanically secures the lid. Mogard further does not meet the limitation of claim 21 requiring a “tamper evident band being unitary at a first location with said lid portion, and further being integral at a second location with said body portion, whereby said closure may not be opened without defeating said tamper evident band.” Mogard does not disclose having a tamper evident band unitary with the body portion or mechanically securing the lid portion to the body.

Moreover, Mogard fails to disclose or suggest a tamper evident band that is diametrically opposed from and distal from the hinge portion, as Claims 1 and 21 recite. The relative positioning of the tamper evident band and the hinge has an important effect on the mechanical characteristics of the claimed closure during opening, and Mogard does not share those characteristics.

For those reasons, Applicant respectfully submits that Mogard does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 3-8, and 10-13 are also in condition for allowance due to their dependence upon an allowable base claim.

Claims 1, 4, 10, 13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,941,592 to Kitterman (hereinafter “Kitterman”). Applicant respectfully submits that Kitterman does not disclose each and every limitation of claims 1, 4, 10, 13, and 21.

The Office Action rejects claims 1, 4, 10, 13, and 21 stating, “The embodiment illustrated in figures 8-11 discloses the tamper evident band 150 is unitary with the lid portion 114 at 152 and integral with the body 112 by locking step 160.”

Kitterman discloses a locking post 150. Locking post 150 is not integrally connected with the body 112. Instead, when the lid 114 is forced upwardly, or the locking post 150 is forced downwardly, the locking post 150 separates from the lid 114 and drops onto the deck or into the body to permit opening of the lid about the hinge structure. When the lid 114 is then closed, notch 146 is then open. This opening serves as notice to a person that the lid has been opened. See col. 5, lines 59-68. The locking post 150 is never integrally connected with the body. It is merely prevented from falling until the lid 114 is opened. Furthermore, it does not remain attached to either the body portion or the lid portion.

Therefore, the locking post 150 does not meet the limitation of claim 1 requiring a “tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.” The locking post is not integral with the body portion. Furthermore, the locking post does not remain attached to the body portion or the lid portion upon opening of the closure. Kitterman also does not meet the limitation of claim 21 requiring a “tamper evident band being unitary at a first location with said lid portion, and further being integral at a second location with said body portion, whereby said closure may not be opened without defeating said tamper evident band.” The locking post is not integral with the body portion. Additionally, claim 21 requires “a drinking spout that is constructed and arranged to facilitate drinking from the container.” The container and lid in Kitterman is a dispensing container. Discharge passage 22 is not constructed and arranged to facilitate drinking.

Moreover, Kitterman fails to disclose or suggest a tamper evident band that is diametrically opposed from and distal from the hinge portion, as Claims 1 and 21 recite. The relative positioning of the tamper evident band and the hinge has an important effect on the mechanical characteristics of the claimed closure during opening, and Kitterman does not share those characteristics.

Applicant respectfully submits that Kitterman does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 4, 10 and 13 are also in condition for allowance due to their dependence upon an allowable base claim.

Claims 1, 3-10, 13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,386,918 to Nevaras et al. (hereinafter “Nevaras”). The Applicant respectfully submits that Nevaras does not disclose each and every limitation of claims 1, 3-10, 13, and 21.

The Office Action rejects claims 1, 3-10, 13, and 21 stating, “The tamper evident band 19 is integral with the body portion upon engagement of body nibs 37 with the recesses 27 of the tamper evident band.”

Neveras discloses a dispensing container for toothpaste or gel. See col. 4, lines 55-56. Neveras discloses a tear band 19 that is removed from the lid 3. Tear band 19 is attached to the lid 3 by bridging portions 35. Recesses 27 are provided between the tear band and lid 3. The pressure between the band 19 and the lid 3 secures nibs 37. The tamper evident band in Neveras is completely removed in opening the container. The tear band retains the body portion due to the pressure the tear band exerts on the nibs 37. There is no portion of the tear band 19 that remains after removal.

Therefore, Neveras does not meet the limitation, as required in claim 1, of a “tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.” There is no portion of the tamper evident band that remains attached to either the body portion or the lid portion upon opening of the closure. In other words, Neveras discloses a mechanical interlock arrangement that is typical of prior art closures.

Moreover, Neveras further does not meet the limitation of claim 21 requiring “a drinking spout that is constructed and arranged to facilitate drinking from the container.” Neveras discloses a nozzle 7 that is used for toothpastes and gels. A nozzle is not a structure that facilitates drinking from the container. Furthermore, Neveras does not contemplate using this structure for a drinking container.

The Applicant respectfully submits that Neveras does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 3-10, 13 are also in condition for allowance due to their dependence upon allowable base claims.

Claims 1, 3, 4 and 21 were rejected under § 102(b) based on WO 98/57864 to Lay (“Lay”). Lay discloses a mechanical interlock having a plug member 62 and an anchor member 64 that extend from a tamper indicating member 54. The anchor member 64 is inserted into an aperture 68 in the body portion of the closure at the packaging facility as part of a mechanical interlock arrangement. This means that the tamper indicating member 54 is neither integral nor unitary with the body portion of the closure. Therefore, Lay does not meet the limitation, as

required in claims 1 and 21, of a “tamper evident band being integral at a first location with said body portion.”

For the reasons given above, Applicant respectfully submits that Lay does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 3 and 4 are also in condition for allowance due to their dependence upon allowable base claims.

Claims 1-4 and 11-13 were rejected under § 102(b) based on WO 00/76875 to Decelles (“Decelles”). This reference discloses a dual tamper evident closure having a tamper evident band 37 of the type that is used to determine whether the closure has been unscrewed from the finish portion of the container to which the closure has been mounted. A tear tab 43 connects the tamper evident band 37 to the lid or cap 29. When the closure is opened, the tear tab 43 is designed to separate from the lid 29.

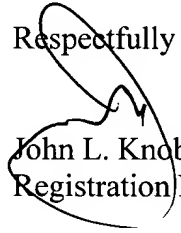
Independent Claims 1 and 21 both specify “at least one tamper evident band positioned between said body portion and said lid portion, said tamper evident band mechanically securing said lid portion to said body portion at a position that is diametrically opposed from and distal from said hinge portion.” The tear tab 43 in Decelles (which is what corresponds to the tamper evident band recited in Applicant’s claims) is not positioned between the body 15 and lid 29, but rather between the lid 29 and the lower tamper evident band 37. The tamper evident band 37 is a part of Decelles’ closure that is clearly separate and distinct from the body 15 and can not reasonably be considered part of the body 15 any more than the hinge 35 or the lid 29 can be considered part of the body 15.

For the reasons given above, Applicant respectfully submits that Decelles does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 11-13 are also in condition for allowance due to their dependence upon allowable base claims.

2. Conclusion

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,


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Date: October 3, 2005

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